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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/784,639	02/23/2004	Christopher Tesluk	1832K US	8172
54964	7590	04/11/2007	EXAMINER	
TYCO HEALTHCARE - EDWARD S. JARMOLOWICZ 15 HAMPSHIRE STREET MANSFIELD, MA 02048			ROST, ANDREW J	
		ART UNIT	PAPER NUMBER	
		3753		
SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE		DELIVERY MODE	
3 MONTHS	04/11/2007		PAPER	

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary	Application No.	Applicant(s)	
	10/784,639	TESLUK ET AL.	
	Examiner	Art Unit	
	Andrew J. Rost	3753	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 18 December 2006.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1,7,9,10,12 and 21-25 is/are pending in the application.
 - 4a) Of the above claim(s) 25 is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 1,7,9,10,12 and 21-24 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 09 May 2005 is/are: a) accepted or b) objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| . Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Election/Restrictions

1. Newly submitted claim 25 is directed to an invention that is independent or distinct from the invention originally claimed for the following reasons: claim 25 is drawn to a method of operating a fluid compression apparatus.
2. Inventions I and II are related as product and process of use. The inventions can be shown to be distinct if either or both of the following can be shown: (1) the process for using the product as claimed can be practiced with another materially different product or (2) the product as claimed can be used in a materially different process of using that product. See MPEP § 806.05(h). In the instant case, invention I, drawn to claims 1, 7, 9, 10, 12 and 21-24, is directed to the product of a fluid connector apparatus. Invention II, drawn to claim 25, is directed to a process of using the product. However, the product could be used in a materially different process (e.g. a pneumatic system such as a drill).
3. The examiner has required restriction between product and process claims. Where applicant elects claims directed to the product, and the product claims are subsequently found allowable, withdrawn process claims that depend from or otherwise require all the limitations of the allowable product claim will be considered for rejoinder. All claims directed to a nonelected process invention must require all the limitations of an allowable product claim for that process invention to be rejoined.

In the event of rejoinder, the requirement for restriction between the product claims and the rejoined process claims will be withdrawn, and the rejoined process

claims will be fully examined for patentability in accordance with 37 CFR 1.104. Thus, to be allowable, the rejoined claims must meet all criteria for patentability including the requirements of 35 U.S.C. 101, 102, 103 and 112. Until all claims to the elected product are found allowable, an otherwise proper restriction requirement between product claims and process claims may be maintained. Withdrawn process claims that are not commensurate in scope with an allowable product claim will not be rejoined. See MPEP § 821.04(b). Additionally, in order to retain the right to rejoinder in accordance with the above policy, applicant is advised that the process claims should be amended during prosecution to require the limitations of the product claims. **Failure to do so may result in a loss of the right to rejoinder.** Further, note that the prohibition against double patenting rejections of 35 U.S.C. 121 does not apply where the restriction requirement is withdrawn by the examiner before the patent issues. See MPEP § 804.01.

4. Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claim 25 is withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

5. Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

Claim Objections

6. Claim 24 contains the following informalities: it appears line 2 should read "includes a plunger and a valve seat" instead of "includes plunger and a valve seat". Appropriate correction is required.

Claim Rejections - 35 USC § 112

7. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

8. Claims 1, 7, 9, 10, 12 and 21-24 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

9. Claim 1 recites the limitation "the apparatus" in lines 4-5. There is insufficient antecedent basis for this limitation in the claim. It is unclear as to which apparatus is being referred: the fluid connector apparatus of line 1 or the compression apparatus of line 2.

Claim Rejections - 35 USC § 103

10. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Art Unit: 3753

11. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

12. Claims 1, 7, 9, 10, 12 and 21-24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Summerville (2,628,850) in view of Phelan (1,883,240).

Regarding claim 1, Summerville discloses a fluid connector apparatus having a first connector (10) and a second connector (36) with the first connector and second connector having a first position (first position shown in top half of fig. 1) and a second position (second position shown in bottom half of fig. 1) with the first connector having an orifice (24) that houses a valve (25). Summerville does not disclose that the second position does not close the orifice to fluid flow but reduces the fluid flow. However, Phelan teaches the use of an auxiliary port through the valve seat in order to provide a condition for a constant flow of fluid there through (page 2, lines 16-21). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the valve seat of the valve of Summerville with an auxiliary port as taught by Phelan in order to provide a condition for a constant flow of fluid there through.

In regards to claims 9 and 10, Summerville discloses the claimed invention except for locking arm extending from the second connector and a slot in the first connector to receive the locking arm. It would have been obvious to one having ordinary skill in the art at the time the invention was made to place the locking arm (currently extending from the first connector as disclosed in Summerville) on the second connector and to place the corresponding slot (currently on the second connector as disclosed in Summerville) on the first connector, since it has been held that a mere reversal of the essential working parts of a device involves only routine skill in the art.

In regards to claim 12, Summerville discloses the second connector to have an engagement portion (42) that contacts the valve of the first connector when the first and second connectors are mated.

In regards to claims 21, 22 and 7, Summerville discloses a biasing member of a spring (26); wherein the valve is in the opened position when the connectors are in the first position; wherein a cap portion (32) limits the motion of the valve.

In regards to claim 23, Summerville discloses the valve to have a slot (openings 29).

In regards to claim 24, the modified Summerville reference discloses a plunger (valve 25) and the valve seat having a slot (auxiliary opening).

Response to Arguments

13. Applicant's arguments with respect to the claims have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

14. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Kanno et al. (6,105,933), Shaff (1,670,318) and Higgins (1,695,848) disclose auxiliary ports in the valve seats of valve assemblies.
15. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Andrew J. Rost whose telephone number is 571-272-2711. The examiner can normally be reached on 7:00 - 4:30 M-Th and 7:00 - 12:00 Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eric Keasel can be reached on 571-272-4929. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

AJR, ASYL 4/2/07



ERIC KEASEL
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3700